

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>MIDAMERICAN ENERGY COMPANY | DOCKET NO. P-844 |
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**ORDER AND NOTICE OF EX PARTE COMMUNICATIONS**

(Issued November 19, 2002)

On September 25, 2002, the presiding officer issued a "Proposed Decision And Order Granting Permit" in Docket No. P-844 approving a petition filed by MidAmerican Energy Company to build a natural gas pipeline from Northern Natural Gas Company pipeline at a connection point east of Ankeny, Iowa, to MidAmerican's Pleasant Hill Energy Center and the proposed Des Moines Energy Center. Appeals of the proposed decision were filed by Dan Fogleman, Ken and Amber Williamson (the Williamsons), and Kenneth R. Silver and Harold K. Silver (the Silvers).

On October 28, 2002, the Board issued an order establishing the issues to be decided on appeal and allowing briefs to be filed. Briefs were filed by MidAmerican, Dan Fogleman, Catherine S. Kile, and the Silvers. The proposed decision is now before the Board for consideration and decision.

Since November 12, 2002, the Board has received two telephone messages from Lori Friend and Jim Hamilton objecting to the natural gas pipeline being constructed through Pleasant Hill. The Board has also received electronic messages from Don and Betty Mulvehill, Connie Uhl, Tom McDonald, and Jesse Uhl objecting

to the construction of the pipeline through Pleasant Hill. One of the electronic messages indicates that the message was sent as a result of a flyer from Dan Fogleman, a party to this case. The Board has also received copies of the flyer that had been distributed throughout the Pleasant Hill community.

Iowa Code § 17A.17(1) prohibits communication by the presiding officer, or the Board, concerning any issues in a contested case with any person or party, except upon notice and opportunity for all parties to participate. Communications prohibited by Iowa Code § 17A.17(1) are considered ex parte communications. Iowa Code § 17A.17(4) requires a presiding officer, or the Board, upon receipt of a communication in violation of subsection 17A.17(1) to place in the record of the proceeding all ex parte communications, a memorandum stating the substance of the communications, and a list of each person from whom an ex parte communication was received. In addition, subsection 17A.17(4) requires the Board to advise all parties of the ex parte communications and allow an opportunity for any rebuttal of the ex parte communication.

The Board is issuing this order to comply with the notice and record requirements of subsection 17A.17(4). Copies of the electronic messages and the response of the Board's manager of Consumer Services will be placed in the official record of this proceeding. Parties will be allowed an opportunity to file a rebuttal to the ex parte communications.

Finally, it appears that the ex parte communications are the result of the flyer prepared and distributed by Dan Fogleman. As a party to this proceeding,

Mr. Fogleman's attempts at influencing the Board's decision through ex parte contacts with the Board are unlawful. Iowa Code § 17A.17(6) provides for appropriate sanctions to be administered for violations of this section of the code. The Board will not apply sanctions to Mr. Fogleman at this time but Mr. Fogleman must cease solicitation of ex parte communications immediately.

**IT IS THEREFORE ORDERED:**

1. Copies of the ex parte electronic messages, responses, and the flyer described in this order, will be filed in the record of this proceeding.
2. Parties may file rebuttal to the ex parte communications on or before November 26, 2002.
3. Dan Fogleman shall cease the solicitation of unlawful ex parte communications immediately.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 19<sup>th</sup> day of November, 2002.